



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. PETITION NO. 25 OF 2014

CHARLES OWOUR OWINO.....1ST PETITIONER

DANIEL MUSYOKI KATHAKU.....2ND PETITIONER

BENARD KIMEU MATIVU.....3RD PETITIONER

NGWEMBE KIMEU.....4TH PETITIONER

PHILES NDETI.....5TH PETITIONER

ALICE MBAIKA BENARD.....6TH PETITIONER

VERSUS

DIRECTOR OF SURVEYS.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

THE COUNTY GOVERNMENT OF

MACHAKOS.....4TH RESPONDENT

JONATHAN MUSYOKA KAMIA.....5TH RESPONDENT

SAMSON MUTISO NGUTI.....6TH RESPONDENT

BENJAMIN WAMBUA MALUVA.....7TH RESPONDENT

CHARLES MWEREZA.....8TH RESPONDENT

RULING

1. By a Motion dated 8th December, 2014, the intended Petitioners seek to be enjoined as Petitioners in the instant Petition.
2. The Application is anchored on Rule 5 (c) of the Mutunga Rules and is supported by the Affidavit of Charles Owuor Owino sworn on the 8th December, 2014 and a Further Affidavit by the same Charles Owuor Owino sworn on the 8th December, 2014.
3. The Application is opposed by the 5th, 6th, 7th and 8th Respondents via an Affidavit sworn by Jonathan Musyoka Kamia sworn on the 5th February, 2015.
4. The Application is further opposed by the intended Petitioners No. 6, 14, 19, 26 and 33 vide an Affidavit sworn by Jane Ndambuki.
5. The basis for the Application is that the intended Petitioners are owners of the named plots (36 in numbers) vide a list of Authority situate

at Konza market. They allege that the Applicants are being affected by the Respondents' illegal acts. They aver that they had not raised enough resources at the commencement of the Petition herein to enable them to be included in the Petition.

6. Through the Further Affidavit of Charles Owuoro Owino, they state that the Konza market was surveyed before 2011 and that they are only waiting for the Title Deeds to be issued. They deny the allegation that the Commissioner of Lands and the Respondents carried out the exercise of identifying individual plots in 2010.

7. In opposition to the same Application, Respondents Nos. 5, 6, 7 and 8 aver that the Applicants have not disclosed their interest in the suit land by any documents such as letters of allotment. They annexed a map showing the approved plan of the market.

8. The intended Petitioners Nos. 6, 14, 19, 26 and 33 on their part have opposed the Application on the ground that their names were taken to the advocate and their signatures forwarded to the court; that they were cheated that they were going to be allocated land and that they are not interested in joining in the case. They pray that their names should be removed from the list forwarded to court.

9. Rule 5(c) of the Mutunga Rules (*Constitution of Kenya Protection of Rights and fundamental Freedoms Practice and Procedure Rules 2013*) stipulate that “*where proceedings have been instituted in the name of the wrong person as a Petitioner or where it is doubtful whether it has been instituted in the name of the right Petitioner, the court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith and it is necessary for the determination of the matter in dispute, order, any other person to be substituted or added as Petitioner upon such terms as it thinks fit*”.

10. In the instant Petition, the Applicants state that they did not have resources at the commencement of the Petition and now want to be enjoined in the Petition. The advanced ground by the Applicants does not fall within the grounds for adding a party to a Petition under Rule 5 (c) of the Mutunga Rules.

11. The Application has even been made worse by the renouncement or repudiation of the Application by some of the Applicants namely, Applicants Nos. 6, 14, 19, 26 and 33 who claim that they were cheated that by signing the authority for the Application herein, they would be allocated plots. They have sought for their names to be expunged from the authority forwarded to the court.

12. After going through the Affidavits, the submissions and the record, I find that the Applicants have not met the threshold set by Rule 5 (c) of the Mutunga Rules. The ground advanced by the Applicants does not fall within the purview of Rule 5(c) of the Rules.

13. The instant Petition is by Petitioners who have set out their stake in the plots. It is incumbent upon the Applicants, if they so wish, to lodge their Petition. They can always then have the two Petitions consolidated. In the premises, the court makes the following orders:

a) The Notice of Motion dated 8th December, 2014 is dismissed.

b) Each party to bear his own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE